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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, CHAIRMAN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

2004 JAN 20 P 1: 24

AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
ALLTEL COMMUNICATIONS, INC. FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(e)(2) OF THE
COMMUNICATIONS ACT OF 1934

Docket No. T-03887A-03-0316

**NOTICE OF FILING REBUTTAL
TESTIMONY**

ALLTEL Communications, Inc. hereby gives notice that it files the attached rebuttal
testimony of Lawrence J. Krajci.

RESPECTFULLY SUBMITTED January 20, 2004.

ALLTEL COMMUNICATIONS, INC.

Arizona Corporation Commission

DOCKETED

JAN 20 2004

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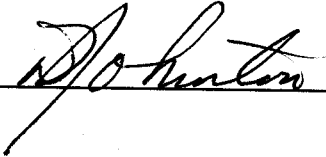
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Docket No. T-03887A-03-0316

**REBUTTAL TESTIMONY OF
LAWRENCE J. KRAJCI
ON BEHALF OF
ALLTEL COMMUNICATIONS, INC.**

JANUARY 20, 2004

1 **Q: Please state your name, position, and business address.**

2 A: My name is Lawrence J. Krajci. I am Staff Manager of State Government Affairs for

3 ALLTEL Communications, Inc. My business address is One Allied Drive, P.O. Box

4 2177, Little Rock, Arkansas, 72203.

5 **Q: Are you the same Lawrence J. Krajci who filed Direct Testimony in this case on**

6 **December 4, 2003?**

7 A: Yes, I am.

8 **Q: What is the purpose of your testimony today?**

9 A: My testimony responds to the Direct Testimony filed in this proceeding by the

10 ALECA witnesses, Judy D. Bruns and Steven D. Metts.

11 **Q: What is your overall response to the testimony filed by Ms. Bruns and Mr.**

12 **Metts?**

13 A: Both Arizona Local Exchange Carriers Association ("ALECA") witnesses oppose

14 ALLTEL's designation as an ETC. In an effort to create unnecessary confusion, delay

15 or merely to thwart ALLTEL's application, Ms. Bruns and Mr. Metts attempt to raise

16 various points that are not relevant to this proceeding. ALLTEL's application for

17 designation as an ETC is a straightforward request to be considered by this Commis-

18 sion under existing laws, rules, and procedures. The criteria to be employed in

19 examining the application have been laid out by the FCC (*see* 47 U.S.C. §

20 214(e)(1)) and ALLTEL meets those criteria. The questions to be answered are

21 relatively few: Is ALLTEL a common carrier? Does ALLTEL or will ALLTEL

22 advertise and offer the supported services as specified by the FCC throughout its

23 designated service area? And for service areas of the rural telecommunications

24 carriers, is it in the public interest to designate ALLTEL as an ETC?

1 **Q: Ms. Bruns and Mr. Metts suggest that this Commission should delay acting upon**
2 **ALLTEL's application until ongoing proceedings at the Joint Board and the**
3 **FCC are completed. [Bruns Direct, p. 5; Metts Direct, p. 23] Do you agree with**
4 **that recommendation?**

5 **A:** No, I do not. Withholding approval because of changes that may or may not take
6 place at some future date is not in the public interest, would be inappropriate and
7 would delay the benefits that additional federal universal service ("FUSF") support to
8 Arizona will bring, including competitive choice, mobility, larger calling scopes and
9 improved network capability to Arizona consumers. The Michigan Public Service
10 Commission addressed this issue in its Order approving ALLTEL's ETC application
11 in that state.

12 The Commission declines CenturyTel's and MCA's recommen-
13 dation to defer its determination of ALLTEL's application until
14 after the Federal-State Joint Board provides further clarity on ETC
15 designations. At this point, there is no time frame in which the
16 Joint Board will act. The Commission, however, has been urged
17 by the FCC to act upon ETC applications within 180 days and the
18 end of that period with respect to this application is fast
19 approaching. The Commission believes the better course of action
20 is to act upon ALLTEL's application within the desired timeframe
21 and take recommendations of the Federal-State Joint Board into
22 account when deciding future cases.

23 [September 11, 2003 Order of the Michigan Public Service Commission in Case No.
24 U-13765]

25 The Arkansas Public Service Commission reached the same conclusion in
26 approving ALLTEL's application for ETC designation in that state.

27 To the extent that the commenting parties have suggested that the
28 Commission delay its decision pending resolution of some of the
29 issues raised in the comments and currently pending or under
30 consideration in United States Congressional committees or before
31 the FCC's Joint Board, the request to delay would be inconsistent
32 with the requirements of 47 U.S.C. § 214(e)(2) which states that
33 the Commission "shall" grant the ETC request if the requirements
34

1 of the statute are met. Additionally, the issues raised by commen-
2 ting parties are best dealt with in the appropriate forums which
3 have the jurisdiction to effect any changes which might be deemed
4 necessary.

5 [Order of the Arkansas Public Service Commission, Docket No. 03-138-U, December
6 31, 2003]

7 Withholding approval of wireless ETC applications until the Joint Board and
8 the FCC complete their review and possible modifications is no more logical than
9 suggesting, which the parties have not done, that the Commission should suspend all
10 FUSF payments to existing ILEC ETCs until such review and modifications are
11 completed. The complete Orders of the Michigan and Arkansas Public Service
12 Commissions are included as "Attachment 1" and "Attachment 2" to this testimony.

13 **Q: Ms. Bruns suggests that ALLTEL should be held to the same service standards**
14 **as those imposed on ILEC ETCs. [Bruns Direct, p. 9] Would that be**
15 **appropriate?**

16 **A:** No it would not. ALECA argues that a wireless ETC should be held to all of the
17 same regulations that apply to ILEC. This argument confuses ETC requirements with
18 ILEC regulation. Specific regulations have been established and apply to ILECs in
19 the state and federal jurisdictions, while other specific regulations have been
20 established and apply to wireless carriers under existing law. Separate and apart from
21 these specific regulations, the Telecommunications Act of 1996 established require-
22 ments that all carriers must meet in order to be designated as an ETC. It is only these
23 specific ETC requirements that are the proper focus of this proceeding. ALECA's
24 attempt to create additional ETC requirements that would impose on ETCs existing
25 ILEC regulations is an effort to prevent non-ILECs from obtaining ETC designation.
26 This is inappropriate and ALECA should not be permitted to confuse the proper focus
27 of the Commission in this proceeding. FCC rules provide that wireless service
28 qualifies for ETC designation. Wireless service, and subsequently wireless ETC
29 service, was never intended to exactly replicate the service of an ILEC. There are
30 inherent differences between wireline and wireless service. Recognizing these

1 differences, the FCC established ETC criteria that can be met by a wireless provider.
2 These criteria provide the customer the benefit of competitive choice. There would
3 be no benefit from imposing regulations that result in the exact same services being
4 offered in exactly the same manner by all providers. The benefits of mobility and
5 enhanced local calling areas provide consumers a viable choice of service provider.

6 There is no requirement under existing federal law, rules, or guidelines that a
7 competitive ETC must offer the same service as an ILEC. This Commission,
8 similarly, declined to impose additional requirements in its Order designating Smith-
9 Bagley as an ETC. ALLTEL clearly has demonstrated in its application that it meets
10 the current FCC requirements. Wireless service is not by its nature exactly the same
11 as wireline service, nor should it be. The competitive benefit that will accrue to
12 customers from ALLTEL's designation as an ETC is not that they will have another
13 ILEC carrier to choose from for their communications needs, but rather that they will
14 have additional services to choose from as well as another choice of provider. Some
15 customers will value larger calling scopes and mobility more than equal access or
16 unlimited local usage. Expanded choices will become available in rural Arizona if
17 ALLTEL is designated as an ETC for FUSF and can use those funds to enhance its
18 network in rural Arizona.

19 **Q: On pages 9 and 10 of her Direct Testimony, Ms. Bruns offers suggestions that**
20 **the Commission should consider in evaluating the public interest. Do her**
21 **suggestions represent valid criteria?**

22 **A:** The criteria suggested by Ms. Bruns would merely impose ILEC standards on a
23 competitive ETC. The public interest is served by providing a competitive choice for
24 customers. Unlike the ILEC ETC, a competitive ETC's support is directly based on
25 the number of customers it serves. The competitive ETC must offer service and
26 pricing plans that are acceptable to its customers in order to receive FUSF support. It
27 is precisely this type of market defined competition that Congress envisioned when it
28 established the laws associated with the federal universal service fund. It is also why
29 the FCC established rules that made FUSF support portable among ETCs.

1 **Q: Mr. Metts voices a similar concern in advocating that the public interest should**
2 **require unlimited local usage. [Metts Direct, p. 13] Should unlimited local usage**
3 **be a measure of public interest?**

4 A: This suggestion is, again, an attempt to impose ILEC standards on a competitive ETC.
5 Ms. Bruns adopts a similar view in her discussion of ALLTEL's universal service
6 offering. [Bruns Direct, p. 13] There are certainly situations where a customer's
7 calling needs would be met by offering a statewide local calling area. ALLTEL's
8 service allows the customer to choose between time (the ILEC unlimited calling) or
9 distance (ALLTEL's expanded local calling area). It is this type of consideration that
10 the FCC took into account when establishing the basic ETC criteria.

11 **Q: Can you address Mr. Metts' reference to ALLTEL's response to the ALECA**
12 **data request concerning ALLTEL's lifeline service offering?**

13 A: ALLTEL has developed a plan for lifeline service subsequent to its response to
14 ALECA's data request. ALLTEL's lifeline service meets all federal guidelines. The
15 service will be made available throughout ALLTEL's ETC designated area. Eligibility
16 will be determined by participation in the food stamp program, Low Income Home
17 Energy Assistance Program ("LIHEAP"), Medicaid, Supplemental Security Income
18 ("SSI") or Federal Public Housing Assistance. The basic lifeline offering will include
19 200 minutes of usage per month within ALLTEL's local calling area (all of Arizona,
20 and parts of New Mexico and California). Initial plans call for a monthly rate of
21 \$21.70. Additionally, ALLTEL's lifeline plan will be consistent with the FCC's
22 Tribal Lands Order, whereby the monthly rate for lifeline service to customers living
23 on Tribal Lands will be \$1.00 per month, with eligibility criteria expanded consistent
24 with the Order to allow greater participation.

1 **Q: On page 15 of her Direct Testimony, Ms. Bruns questions whether ALLTEL is**
2 **lawfully terminating its customers' traffic to ALECA customers. Is this a**
3 **concern that should be addressed in this proceeding?**

4 A: No it is not. ALLTEL's interconnection agreement with Qwest provides for the
5 delivery and termination of traffic from ALLTEL's wireless customers through
6 Qwest's tandem offices to ILEC end offices. The determination to connect either
7 directly or indirectly with any ILEC is based on traffic considerations, and is unrelated
8 to ALLTEL's ETC designation. Ms. Bruns again is attempting to raise issues that are
9 not the subject of this proceeding.

10 **Q: Mr. Metts indicates that granting ETC status to ALLTEL would threaten**
11 **universal service in Arizona's rural exchanges because of the "alarming" growth**
12 **in the size of the federal USF. [Metts Direct, p. 15] Do you agree?**

13 A: No I do not. Concerns over growth in the federal high cost fund as the result of
14 designating additional ETCs is beyond the scope of this proceeding. The Joint Board
15 is in the process of evaluating this issue. When that process is complete, any changes
16 in ETC requirements will apply to all ETCs. Further, the "alarming growth" is
17 attributed far more to increases in draws from the FUSF by ILECs, than from the
18 designation of competitive ETCs. While Mr. Metts states that the end-user customer
19 surcharge has risen from 3.2% to 8.7% over the last five years, he also notes that the
20 amount drawn by competitive ETCs has risen to \$62M per quarter. Notwithstanding
21 the fact that this is totally unrelated to ALLTEL's application in this proceeding, the
22 large majority of federal USF support continues to go to ILECs. For the 4th quarter of
23 2002, all competitive ETCs (including wireless ETCs) received only about 7% of the
24 total FUSF disbursed to ETCs. The extensive growth in the FUSF to which Mr.
25 Metts refers was mainly the result of increased draws by the ILECs.

1 **Q: Mr. Metts is concerned that the redefinition of ILEC service areas would**
2 **substantially burden the rural ILECs. [Metts Direct, p. 20] Do you agree?**

3 A: I do not. Mr. Metts' concerns are with the potential cost of rural ILECs disaggre-
4 gating their study areas to determine costs at less than a study area level.
5 Disaggregation is often cited as a means to prevent "cream skimming" or targeting of
6 high cost areas by competitive ETCs. ALLTEL seeks a redefinition of ILEC study
7 areas for the sole purpose of allowing ALLTEL to receive its ETC designation
8 throughout ALLTEL's entire service area, not to target any specific portions of an
9 ILEC's service area. ALLTEL's ETC designation, and the subsequent redefinition of
10 the ILEC study areas, do not require that the ILECs disaggregate their study areas.

11 **Q: Can you please summarize your Rebuttal Testimony?**

12 A. The Direct Testimony of the ALECA witnesses attempts to unnecessarily complicate
13 and confuse this proceeding and delay the benefits that will accrue to Arizona
14 consumers following ALLTEL's designation as an ETC for FUSF in the areas
15 requested. Similar arguments have been rejected by other state commissions and
16 should be rejected by the Arizona Commission as well. ALLTEL's application for
17 ETC designation, its Direct Testimony filed in this proceeding, its responses to other
18 parties' data requests, and the recommendation filed by the Commission's Staff
19 provide all the information needed for this Commission to designate ALLTEL an
20 ETC in the areas requested.

21 **Q: Does this conclude your Rebuttal Testimony?**

22 A: Yes.

**MICHIGAN
ORDER**

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
ALLTEL COMMUNICATIONS, INC.,)	
for designation as an eligible telecommunications)	Case No. U-13765
carrier pursuant to Section 214(e)(2) of the)	
Communications Act of 1934.)	
_____)	

At the September 11, 2003 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On April 14, 2003, ALLTEL Communications, Inc., (ALLTEL) filed an application seeking designation as an eligible telecommunications carrier (ETC) under Sections 214(e)(2) and 214(e)(6) of the federal Communications Act of 1934, as amended, 47 USC 214(e)(2) and 214(e)(6) (federal Act) and Sections 201 and 203 of the Michigan Telecommunications Act, MCL 484.2101 et seq. (MTA). If granted, designation as an ETC would permit ALLTEL to receive universal service support in Michigan.

Several parties petitioned to participate in the proceeding. On May 6, 2003, the Commission Staff (Staff) filed a notice of appearance. On May 21, 2003, CenturyTel of Michigan, Inc.,

CenturyTel Midwest-Michigan, Inc., CenturyTel of Northern Michigan, Inc., and CenturyTel of Upper Michigan, Inc., (CenturyTel) jointly filed a petition to intervene. Also on May 21, 2003, Hiawatha Telephone Company, Chippewa County Telephone Company, Midway Telephone Company, and Ontonagon County Telephone Company (Hiawatha) jointly petitioned to intervene. The Michigan Exchange Carriers Association, Inc., (MECA), a voluntary association of 33 small incumbent local exchange carriers (ILECs) in Michigan, also filed a petition. On May 28, 2003, AT&T Communications of Michigan, Inc., and TCG Detroit (AT&T) filed a notice of intent to participate.

On May 28, 2003, a pre-hearing conference was conducted by Administrative Law Judge Mark E. Cummins (ALJ). ALLTEL, CenturyTel, MECA, AT&T, and the Staff attended. The ALJ granted the petitions to intervene and ordered the parties to file their direct testimony by June 10, 2003 and rebuttal testimony by June 23, 2003. Cross-examination of witnesses was to take place on July 7, 2003,¹ with a briefing schedule to be determined thereafter. In order to meet the 180-day Federal Communications Commission (FCC) guideline for state commissions to act on ETC applications, the Commission agreed to read the record in this proceeding.

Several parties filed testimony. ALLTEL filed the direct and rebuttal testimony of Lawrence J. Krajci, its Staff Manager of State Government Affairs. CenturyTel filed the direct and rebuttal testimony of Ted M. Hankins, its Director of State Government Relations. MECA filed the direct and rebuttal testimony of Robert W. Orent, President and CEO of Hiawatha Communications, Inc. The Staff filed the direct testimony of Daniel J. Kearney, Supervisor of the Operations Section of the Commission's Telecommunications Division.

¹ This date was later moved to July 8, 2003.

On July 8, 2003, the ALJ conducted an evidentiary hearing. All testimony was bound into the record by stipulation of the parties and cross-examination of witnesses was waived. ALLTEL, CenturyTel, MECA, and the Staff filed briefs and reply briefs on July 23 and August 1, 2003, respectively.

On July 25, 2003, ALLTEL filed a motion to strike portions of CenturyTel's reply brief. ALLTEL contends that CenturyTel inappropriately raised arguments for the first time in its reply brief, thereby preventing ALLTEL an opportunity to respond.

II.

POSITIONS OF THE PARTIES

There are two issues in this proceeding. First is whether ALLTEL should be designated as an ETC for purposes of receiving universal service support. Second, if ALLTEL is granted ETC status by the Commission, for what service area(s) should ALLTEL's status be granted.

ALLTEL

ALLTEL argues that it meets the requirements for ETC designation under the federal Act. ALLTEL states that it meets all the statutory and regulatory prerequisites for ETC designation and that designating ALLTEL as an ETC will serve the public interest. ALLTEL represents that once it receives its ETC designation, it plans to use the funding to speed the delivery of advanced wireless services to its customers. As an ETC, ALLTEL states that it will offer a basic universal service package to customers who are eligible for Lifeline and will provide service to any customer requesting service within its designated service area. ALLTEL further avers that it provides all the services supported by universal service mechanisms. ALLTEL says that it will

advertise the availability of the supported services and charges in a way that fully informs the general public throughout its designated service area.

ALLTEL argues that its application is in the public interest. ALLTEL asserts that granting it ETC status will help bring meaningful choice to Michigan customers who have few, if any, choices for local exchange service. ALLTEL further asserts that its ETC status will bring the benefits of competition to customers, increase choices, and lower rates. ALLTEL further notes that the FCC has determined that wireless providers may be designated as ETCs.² ALLTEL claims that its customers will benefit from having an expanded local calling area, making intrastate toll calls more affordable.

ALLTEL also requests that the Commission establish its service area for purposes of determining universal service support. ALLTEL specifically requests that it be granted ETC status for its entire licensed service area in Michigan. Attached to its application are exhibits that identify each of the requested areas by wire center. Where ALLTEL serves only a portion of a wire center, it requests ETC designation in that portion of the wire center where it provides service. For certain rural areas, ALLTEL requests that the Commission redefine the service area of several ILECs because ALLTEL only serves a portion of the ILECs' service areas.

CenturyTel

CenturyTel argues that ALLTEL's application must be denied. CenturyTel believes that ALLTEL's application does not meet the requirements for the granting of ETC status under

² See, ALLTEL application, p. 9, citing, *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCCR 8776, 8858-59, ¶¶ 145-47 (1997).

Section 214(e), because granting ETC status to ALLTEL would not be in the public interest.³

CenturyTel asserts that ALLTEL has been successful at providing service without the need for universal service support. It argues that giving ALLTEL universal service funds would give ALLTEL an unearned windfall, would work to increase charges for Michigan customers, and will ultimately jeopardize the universal service support mechanism altogether.

CenturyTel claims that ALLTEL should not be granted ETC status because, as a wireless carrier, ALLTEL's costs are unrelated to landline costs from which universal service support is derived. CenturyTel also asserts that it is held to higher service standards and regulatory obligations than wireless carriers, which result in higher operating costs for CenturyTel. CenturyTel specifically objects to the fact that ALLTEL has lower costs than CenturyTel, but would receive the same universal service support. CenturyTel argues that granting ALLTEL ETC status would create an uneven playing field, biased against higher cost providers, and could actually reduce competition.

CenturyTel also expressed concern over the fact that wireless carriers are not subject to the same regulatory oversight as incumbent carriers. CenturyTel contends that while wireless carriers are seeking support from a regulatory cost recovery mechanism, the Commission has no regulatory oversight over these carriers to ensure that the monies are used to advance universal service. CenturyTel contends that this uneven playing field, and the fact that the benefits of granting wireless carriers ETC status do not exceed the costs, means that granting ALLTEL's application would not be in the public interest.

³ In its reply brief, CenturyTel also asserts that ALLTEL's application is insufficient because ALLTEL does not provide "local usage" as required by federal law. CenturyTel's argument suggests that all wireless carriers in Michigan cannot meet the federal requirement because of the exclusion of mobile service from basic local exchange service. This Commission, however, has previously granted ETC status to several wireless carriers.

CenturyTel also believes that it would be premature for the Commission to grant any ETC applications while the FCC is in the process of considering new rules for the granting of ETC status to competitive carriers.⁴ CenturyTel suggests waiting until the FCC makes its pronouncements regarding any changes.

Furthermore, if the Commission decides to grant ALLTEL's application, then CenturyTel requests that ALLTEL's ETC status be conditioned on ALLTEL's compliance with regulatory safeguards to ensure a level competitive playing field with rural providers. CenturyTel also argues that allowing ALLTEL to have ETC status in only a portion of a rural ILEC's service area is contrary to the public interest, and that the Commission should not redefine CenturyTel's rural ILEC service area.

Hiawatha

Hiawatha believes that ALLTEL's application does not satisfy the requirements of granting ETC status and therefore should be denied. Hiawatha asserts that it provides rural telecommunications services and would be economically harmed if ALLTEL's application were granted. Hiawatha believes that universal service support is a scarce resource that is jeopardized by granting ETC status to providers like ALLTEL whose lower costs do not justify receiving the same level of support as rural carriers. Hiawatha also believes that granting ALLTEL ETC status would create an uneven competitive playing field for rural carriers. Hiawatha claims that wireless carriers given ETC status should be subject to the same service quality and reporting requirements as ILECs. Hiawatha also believes that ALLTEL should be required to serve the same areas as the ILECs and that the Commission should not redefine Hiawatha's service areas. Hiawatha also

⁴ See, Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, FCC 03J-1, CC Docket No. 96-45 (February 7, 2003).

contends that in order for ALLTEL's application to satisfy the public interest requirement, ALLTEL should have to demonstrate that the benefits of supporting multiple networks outweigh the cost of supporting multiple networks.

MECA

MECA also opposes ALLTEL's application for designation as an ETC. MECA asserts that it and its members, many of whom provide service to rural areas of the state, will suffer from a loss of universal service support. MECA asserts that a loss of universal service funds will affect small rural telecommunications providers' ability to maintain and invest in the infrastructure needed to serve high-cost areas.

MECA argues that ALLTEL's application cannot be granted unless granting the application is in the public interest. MECA asserts that merely providing all universal service supported services does not mean that an applicant's application is in the public interest. MECA alleges that the further public interest finding should be based upon universal service purposes and principles. MECA asserts that Congress, in placing this added requirement, did not believe that the public interest would always be served by encouraging competition in rural areas.

MECA claims that Congress did not intend universal service support to be a subsidy program. Rather, MECA argues, Congress intended universal service support to provide for cost recovery in order to promote infrastructure investment in high-cost rural areas where providing the same quality service at affordable rates comparable to urban areas is not suitable for carriers. MECA argues that without this support, high-cost investment would not have occurred in the past and will not occur in the future. MECA sees infrastructure investment as the primary goal of the universal service program.

MECA argues that the only providers of high quality, facilities-based services throughout their respective service areas are the rural ILECs. MECA claims that once a rural ILEC loses the ability or incentive to continue investing in its network, then rural areas may be deprived of affordable, high quality telecommunications services. MECA asserts that lack of sufficient funding will also affect the deployment of advanced services to consumers, such as schools, libraries, and health care facilities.

Consequently, the granting of ETC status to competitive carriers in areas served by rural carriers, MECA contends, must be properly managed to foster the goals of the federal Act. MECA claims that if the overall demand for funding grows to an unsustainable level, then support payments will be frozen or curtailed, resulting in serious operating issues for many rural telephone companies. MECA claims that this would result in reductions in service quality, higher rates, and perhaps even financial failure of rural companies that serve as the "lifeline" for many remote customers. MECA argues that the proliferation of "uneconomic competition" in rural areas could jeopardize rural telecommunications services altogether.

MECA also asserts that state commissions have placed far too great an emphasis on the benefits of competition when deciding ETC applications for rural service areas. MECA claims that subsidized competition does not serve the public interest. MECA believes that this over-emphasis has been to the detriment of ensuring that all consumers will retain and gain access to high quality, affordable telecommunications services, including advanced services, on a comparable basis to those available in urban areas. Because of this, MECA believes that the Commission must establish a set of principles to guide its decisions on ETC applications affecting rural areas.

To assist the Commission in establishing this set of principles, MECA offers its own. First, rural consumers should receive access to affordable, high quality telecommunications and information services, including advanced services that are reasonably comparable to those in urban areas and at reasonably comparable prices. Second, high-cost support should not be used as an incentive for uneconomic competition in areas served by rural carriers. Third, universal service funds are a scarce national resource that telephone companies must carefully manage to serve the public interest. Fourth, rural universal service support reflects the difference between the cost of serving high-cost rural areas and the rate levels mandated by policymakers. Fifth, the public interest is served only when the benefits from supporting multiple carriers exceed the costs of supporting multiple networks. Sixth, in areas where costs of supporting multiple networks exceed the public benefits from supporting multiple carriers, the public interest dictates providing support to a single carrier that provides critical telecommunications infrastructure. Seventh, the cost of market failure in high-cost rural Michigan could be severe.

In addition to the guiding set of public interest principles, MECA believes the Commission should create a standard set of minimum qualifications, requirements, and policies to be applied when considering ETC applications for rural service areas. MECA believes that using such a template would help the Commission determine whether the public interest would be served by granting an application. MECA also asserts that such a guideline would improve the long-term viability of the universal service fund because it believes only the most qualified carriers that are capable of, and committed to, being "true providers" of universal service should receive the ETC designation.

To assist the Commission, MECA offers the following qualifications and requirements that it believes the Commission should adopt when considering ETC applications: 1) A carrier must

demonstrate its ability and willingness to provide all supported services throughout the service area. 2) To fulfill the advertising requirement, an ETC must emphasize its universal service obligation to offer service to all consumers in the service area. 3) A carrier must have formal arrangements in place to provide service where facilities have yet to be built. 4) A carrier must have a plan for building out its network once it receives ETC status and must make demonstrative progress toward achieving its plan to retain its status. 5) A carrier must demonstrate that it is financially stable.

In addition to public interest principles, and minimum qualifications and requirements, MECA urges adoption of the following policies that it believes the Commission should adhere to when reviewing ETC applications involving rural areas: 1) ETC designations in rural areas should be made at the study area level (an ILEC's entire service territory within one state). 2) The Commission should ensure that competitive ETCs will be capable of providing high-quality service to all customers in the service area should the rural ILEC find it necessary to relinquish its own ETC designation. 3) Any service quality standards, reporting requirements, and customer billing requirements established by the Commission should apply equally to all ETCs in the state. 4) The Commission should retain the authority to decertify any ETC that is not meeting any of the Commission's qualifications and requirements.

In short, MECA does not believe that granting ALLTEL's application would be in the public interest. MECA also supports deferring the decision on ALLTEL's application until the Federal-State Joint Board clarifies the process for designating ETCs.

Staff

The Staff's testimony references background material that it believes will assist the Commission in determining whether granting ALLTEL's application would be in the public

interest. In so doing, the Staff directs attention to portions of the MTA and the federal Act that support the development and the use of competition to make available quality telecommunications services at prices that are just, reasonable, and affordable even in rural, high-cost areas. The Staff also presents a number of questions for the Commission's reflection. The Staff would like more guidance as to the definition of "public interest." The Staff suggests that healthy competition is the most significant factor in a public interest analysis, followed closely by choice and reasonable rates. In the end, the Staff sees no reason to further delay or deny ALLTEL's ETC designation.

III.

DISCUSSION

ETC Designation

Pursuant to 47 USC 214(e)(2), the Commission may designate more than one carrier in a rural area as an ETC if the Commission finds doing so consistent with the public interest, convenience, and necessity. The parties to this proceeding opposing ALLTEL's application argue that granting ALLTEL's application is not in the public interest. The Commission disagrees. On numerous occasions, the Commission has found that competition can be advantageous to the citizens of this state. In this case, designating ALLTEL as an ETC is in the public interest because it is likely to promote competition and provide benefits to customers in rural and high-cost areas by increasing customer choice, while promoting innovative services and new technologies, and encouraging affordable telecommunications services. Further, ALLTEL provides service where there are few, if any, competitive local exchange carriers.

The Commission disagrees with the significance of the numerous arguments advanced by the opposing parties. To the extent that the opposing parties claim that wireless service is inferior to landline service, the Commission responds that customers should not be denied an opportunity to

determine which of these services best meets their needs. In response to the argument that wireless service providers are not subject to the same regulations designed to protect customers, the Commission finds sufficient protection for customers in their right to choose not to use wireless service and to choose from whom to take service. To the extent that the opposing parties are concerned about the effects on themselves of competition from wireless carriers, the Commission does not agree that the public interest requires that they be protected from competition. Moreover, concerns over the effects of competition on the universal service mechanism are better addressed by the FCC, which is responsible for disbursing the federal universal service funds.

There is ample precedent in support of a wireless carrier's designation of ETC status. On at least three prior occasions, this Commission has granted ETC status to wireless carriers.⁵ In addition, numerous ETC proceedings involving competitive carriers, including wireless carriers, have taken place at the FCC and before other state commissions with the competitive carrier ultimately being granted ETC status.⁶ The Commission provided parties an opportunity to voice their concern about the granting of ETC status to a wireless carrier by conducting an evidentiary hearing. Virtually every argument raised by the parties in opposition to ALLTEL's application, however, has been addressed previously. No new information was brought to the Commission's

⁵ See, the August 26, 2003 order in Case No. U-13714, the November 20, 2001 order in Case No. U-13145, and the December 6, 2002 order in Case No. U-13618.

⁶ See, e.g., *RCC Minnesota, Inc. et. al. Request for Designation as Eligible Telecommunications Carrier*, Order, Maine Public Utilities Commission Docket No. 2002-344 (May 13, 2003); *In the Matter of Federal State Joint Board on Universal Service Cellular South License Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3317 (rel. Dec. 4, 2002); *In the Matter of Federal State Joint Board on Universal Service RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunication Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3181 (rel. Nov. 2, 2002).

attention that would persuade the Commission that designating a competitive carrier as an ETC in an area served by a rural ILEC would be contrary to the public interest.

Furthermore, the Legislature has decided that the Commission should not regulate wireless service. For that reason, the Commission must also decline to adopt the conditions proposed, such as requiring ALLTEL to assume carrier of last resort responsibilities, which would require that the Commission regulate wireless service. Consistent with prior designations, however, the Commission reserves the right to conduct audits as needed to determine that the funds are used for permitted purposes.

The Commission declines CenturyTel's and MECA's recommendation to defer its determination on ALLTEL's application until after the Federal-State Joint Board provides further clarity on ETC designations. At this point, there is no time frame in which the Joint Board will act. The Commission, however, has been urged by the FCC to act upon ETC applications within 180 days and the end of that period with respect to this application is fast approaching. The Commission believes the better course of action is to act upon ALLTEL's application within the desired timeframe and take recommendations of the Federal-State Joint Board into account when deciding future cases.

Service Area

ALLTEL also requests that the Commission establish a "service area" for purposes of determining universal service support. The federal Act defines the term "service area" to be a "geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms." 47 USC 214(e)(5). As stated above, ALLTEL requests that its licensed service area be the designated service area for universal service support.

Additionally, ALLTEL requests that the Commission redefine the service areas of rural ILECs where it cannot provide service to the entire service area of these companies.

CenturyTel, Hiawatha, and MECA oppose ALLTEL's service area proposal. They argue that ALLTEL must serve the same service area as the rural ILEC. CenturyTel contends that redefining a rural carrier's service area acts as a disincentive for an additional ETC to serve the most rural parts of a relevant study area. CenturyTel contends that the goal of universal service would be better served by requiring "ETCs to expand their horizons." CenturyTel Brief, p. 17. CenturyTel is also concerned that if additional ETCs are not required to serve a rural ILEC's entire study area, then there is a greater risk of "cream-skimming," where the additional ETC can choose to provide service to lower cost customers without being subject to providing service to attendant higher cost customers while receiving the same level of universal service support as the rural ILEC. MECA also raises concerns about what it described as significant administrative burdens for an ILEC as a result of study area changes. MECA describes how an ILEC's accounting and auditing procedures are built around their existing study areas.

The Commission appreciates the concerns raised by CenturyTel, Hiawatha, and MECA, but declines to accept the proposal that the wireless carrier's service area should encompass the ILEC's entire study area. In granting ETC status to RFB Cellular, Thumb Cellular, and NPI-Omnipoint Wireless, LLC, the Commission did not require the wireless carrier to provide service to the entire study area of the rural ILEC.

The Commission, however, also has concerns with ALLTEL's proposal to redefine the service areas of certain ILECs. The study areas of rural ILECs have existed for many years and many accounting and other administrative tasks are based upon those study areas.

The Commission is also sensitive to the "cream-skimming" issues that could exist if every ETC applicant is able to carefully craft its own desired service area. Consequently, the Commission has decided to delineate service areas for purposes of universal service support by exchanges. In so doing, the Commission finds that the "cream-skimming" concerns are alleviated because ALLTEL has not specifically picked the areas in which it will serve, but instead the areas were defined in the FCC's wireless licensing process. Additionally, exchanges tend to encompass many types of customers, including rural and high-cost customers. The Commission is persuaded that ALLTEL is not targeting any specific area or that serving any of the partial study areas would result in a windfall due to service to a highly-populated area. Much of the area covered by ALLTEL's wireless carrier license is in very rural parts of Michigan. The Commission is also convinced that designating service areas utilizing entire exchanges will minimize the administrative burden on rural telephone companies to calculate costs at something other than a study area level. This approach will require affected ILECs to disaggregate into service areas that are coterminous with existing telecommunications boundaries for which costs are already calculated.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. ALLTEL should be designated as an ETC for the purpose of receiving federal universal service funds.
- c. ALLTEL's designation as an ETC is in the public interest.

d. ALLTEL's service area for purposes of determining universal service obligations and support mechanisms should be coterminous with established exchanges.

e. ALLTEL should be directed to file in this docket (and serve upon the other parties) a listing of the exchanges where it currently provides service or intends to provide service under its license and for which it wishes to receive universal service support and is able to meet universal service obligations.

f. The granting of ALLTEL's ETC status should be conditioned upon the Commission's reservation of its right to audit all expenditures of these universal service funds.

g. ALLTEL's ETC designation should be subject to the annual Commission re-certification process. ALLTEL should be directed to contact the Staff regarding the 2004 re-certification process prior to September 17, 2003.

h. ALLTEL's August 25, 2003 motion to strike should be denied.

THEREFORE, IT IS ORDERED that:

A. ALLTEL Communications, Inc., is designated an eligible telecommunications carrier for the purpose of receiving federal universal service funds.

B. ALLTEL Communications, Inc.'s, service area for purposes of determining universal service obligations and support mechanisms is to be coterminous with established exchanges.

C. ALLTEL Communications, Inc., is directed to file in this docket (and serve upon the other parties) a listing of the exchanges where it currently provides service or intends to provide service under its license and for which it wishes to receive universal service support and is able to meet universal service obligations.

D. ALLTEL Communications, Inc.'s, eligible telecommunications carrier designation is conditioned upon the Commission's reservation of its right to audit all expenditures of these universal service funds.

E. ALLTEL Communications, Inc.'s eligible telecommunications carrier designation is subject to the annual Commission re-certification process. ALLTEL is directed to contact the Commission Staff regarding the 2004 re-certification process prior to September 17, 2003.

F. ALLTEL Communications, Inc.'s August 25, 2003 motion to strike is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of September 11, 2003.

/s/ Robert W. Kehres
Its Acting Executive Secretary

**ARKANSAS
ORDER**

Dec 31 12 03 PM '03

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF)
 ALLTEL COMMUNICATIONS, INC. FOR)
 DESIGNATION AS AN ELIGIBLE)
 TELECOMMUNICATIONS CARRIER PURSUANT)
 TO SECTION 214(e)(2) OF THE)
 COMMUNICATIONS ACT OF 1934)

FILED
 DOCKET NO. 03-138-U
 ORDER NO. 5

ORDER

On August 14, 2003, ALLTEL Communications, Inc. ("ALLTEL") filed an application for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to § 214(e)(2) of the Communications Act of 1934, as amended¹. ALLTEL seeks ETC designation for Federal Universal Service Fund ("USF") support throughout its licensed service areas in the State of Arkansas in wire centers served by SBC²; CenturyTel of Northwest Arkansas, LLC; and CenturyTel of Central Arkansas, LLC (together "CenturyTel"). ALLTEL provides Commercial Mobile Radiotelephone Service ("CMRS")³ in Arkansas Cellular Market Areas ("CMAs") 92 (Little Rock/North Little Rock), 165 (Fort Smith), 182 (Fayetteville/Springdale), 291 (Pine Bluff), and Arkansas Rural Service Areas ("RSAs") 1-12 (CMAs 324-331). ALLTEL proposes to advertise and provide the USF supported services designated in 47 U.S.C. § 214(e)(6). In support of its application ALLTEL has submitted the affidavit of Steve R. Mowery, Vice President, State Government Affairs for ALLTEL, certifying that ALLTEL will advertise and provide the required services. In accordance with Order No. 3 of this docket comments were

¹ 47 U.S.C. § 214(e)(6).

² Referring to Southwestern Bell Telephone LP.

³ Also referred to as wireless or cellular service.

filed on October 3, 2003 by three groups of incumbent local exchange carriers ("ILECS")⁴, and reply comments were filed by ALLTEL on October 10, 2003. In accordance with Order No. 4 of this docket, a hearing was held on November 5, 2003 and post hearing briefs were filed on November 26, 2003.

The rural ILECs argue that if ALLTEL takes a customer from an ILEC, the rural ILECs will lose terminating access charges which would have been paid to rural ILECs for terminating the toll calls of the customer taken by ALLTEL. The rural ILECs acknowledge that ALLTEL would pay terminating access charges to rural ILECs for termination of toll calls from ALLTEL customers, however, the rural ILECs assert that the terminating access rates paid by wireless carriers are substantially less than those paid by other ILECs or interexchange carriers ("IXCs"), and the resulting reduction in access charges paid to the rural ILECs could affect their profitability. The rural ILECs also assert that some ILECs have no agreement with CMRS carriers for termination of minutes and receive no revenue from CMRS carriers, including ALLTEL. The rural ILECs state that, "As wireless carriers capture market share in Arkansas, the revenue of each of the ILECs decline as traffic is moved from ILEC to ILEC or IXC to ILEC to CMRS to ILEC."⁵ However, the rural ILECs also state that, "Even if Alltel Wireless is not an

⁴ The commenting parties are three groups of ILECS which will be referred to as (1) "the rural ILECS", which consist of Arkansas Telephone Company, Inc.; Central Arkansas Telephone Cooperative, Inc.; Madison County Telephone Company; Magazine Telephone Company; Northern Arkansas Telephone Co.; Pinnacle Communications; Prairie Grove Telephone Company; Rice Belt Telephone Company; South Arkansas Telephone Company, Inc.; Southwest Arkansas Telephone Cooperative, Inc.; Walnut Hill Telephone Company; and Yell County Telephone Company (2) "the Ritter companies", which consist of Ritter Communications Holdings, Inc. on behalf of its wholly owned subsidiaries Ritter Telephone Company and Tri-County Telephone Company, along with Yelcot Telephone Company and Mountain View Telephone Company and (3) "the CenturyTel companies" which consist of CenturyTel of Central Arkansas, LLC; CenturyTel of Northwest Arkansas, LLC; CenturyTel of Arkansas, Inc.; CenturyTel of Mountain Home, Inc.; CenturyTel of Redfield, Inc.; CenturyTel of South Arkansas, Inc.; Cleveland County Telephone Company, Inc.; and Decatur Telephone Company, Inc.

⁵ Initial Comments of Various Rural ILECs, p. 2, filed Oct. 3, 2003.

ETC in the Rural ILECs' area the loss of revenue occurs."⁶ The rural ILECs argue that wireless carriers offering of toll minutes in wireless plans could require the rural ILECS to expend money to carry the additional traffic volume, further detracting from their profitability, and that wireless carriers are essentially unregulated in Arkansas and do not provide their customers with the protections provided in the Arkansas Public Service Commission ("APSC" or "this Commission") Telecommunications Provider Rules because wireless carriers are not subject to those rules. The rural ILECs argue that because wireless carriers are not subject to the APSC's Telecommunications Provider Rules, and an ETC designation could result in lost toll or access revenues, and an ETC designation would require additional USF funding, it is not in the public interest to approve ALLTEL's ETC request.

The Ritter companies assert that granting ETC status to ALLTEL could detrimentally effect the USF, because the USF is funded by assessments on telecommunications providers' interstate revenue and as the size of the USF grows, as a result of commercial mobile radio service providers receiving ETC status, the customers of the Ritter companies will be charged increasing amounts to fund the USF and will receive no demonstrable benefit.

The Ritter companies also argue that CMRS providers are not subject to the same quality of service standards as ILECs and are not required to serve as a provider of last resort. The Ritter companies assert that the lack of these protections for ALLTEL's customers leads to the conclusion that ALLTEL's designation as an ETC is not in the public interest.

The Ritter companies' comments also point to the continuing activity by the Federal-State Joint Board on Universal Service ("Joint Board") and the United States House of Representatives Energy and Commerce Committee which are reviewing the operations of the

⁶ Id.

USF. The Ritter companies suggest that this Commission wait until the Joint Board and Congress have completed their reviews of the USF and make any necessary changes before granting ETC status to ALLTEL. The Ritter companies also question how ALLTEL will determine whether customers in certain exchanges are in fact CenturyTel or SBC customers, or Ritter customers, since Ritter has customers who have mailing addresses in towns with wire centers served by CenturyTel or SBC.⁷

The CenturyTel companies also raise many of the issues that are currently under review by the Joint Board, arguing that the availability of affordable high quality telephone services to consumers is at risk because of the ever-increasing demands on the USF from new carriers being granted ETC status. The CenturyTel companies request that the APSC deny the ETC request and initiate a generic proceeding to examine the policy and factual issues presented by the application or delay any decision until the Joint Board reports its findings regarding the USF to the Federal Communications Commission ("FCC"). The CenturyTel companies refer to the "spiraling" demands on the USF caused by the influx of ETC applications asserting that ALLTEL does not need USF support to be competitive and that granting ETC status to carriers that do not need USF support places the USF at risk.

The CenturyTel companies also argue that, when a carrier like ALLTEL receives an ETC designation, it can increase its revenues through USF support funds regardless of whether it adds any additional customers or obtains any customers from the ILEC serving the same area. CenturyTel suggests that this ability to artificially inflate revenues through Federal USF support when it cannot be shown that the revenues are needed is contrary to the public interest.

⁷ Comments of Ritter Communications, ¶ 8, filed Oct. 3, 2003.

The CenturyTel companies claim that ALLTEL has not shown that it is able to provide service in the entire study area of the effected ILECs, that ALLTEL is not required to serve as a carrier of last resort and is not subject to the APSC's Telecommunications Provider Rules. CenturyTel therefore asserts that it is not in the public interest to grant the ETC request.

ALLTEL's response to the comments filed by the ILECs asserts that it has met all of the criteria set forth in the Federal Act regarding ETC designation. ALLTEL emphasizes that differences in the manner in which ILECs and CMRS providers are regulated does not effect the specific requirements of the Federal Act regarding ETC designation.

Concerning the comments on how ALLTEL will determine a customer's location, Alltel notes that 47 C.F.R. § 54.307 requires that "Carriers providing wireless mobile service in an incumbent LEC's service shall use the customer's billing address for purposes of identifying the service location of a wireless customer in a service area." ALLTEL argues that it must comply with the cited provision and the argument against using that methodology therefore lacks merit.

ALLTEL also asserts that it is inappropriate to wait until a decision of the FCC or a congressional committee which may or may not take place at some future date, and that the benefits of competitive choice, mobility, larger calling scopes and improved network capability to Arkansas consumers provide sufficient benefits to determine that granting the ETC request is in the public interest.

Although the comments raise significant public policy issues, those issues are properly being addressed at the Congressional level and at the Federal Communications Commission. To the extent comments raise public policy issues such as the potential expansion of the Federal Universal Service Fund, these matters of public policy should be addressed at the Federal level and should not effect this Commission's decision in this case for two reasons.

First, this Commission has no jurisdiction to make changes in the Federal USF or the laws under which the Federal USF is established, and, second, this Commission is obliged to follow the requirements of Arkansas law which require this Commission to act consistently with the Federal Act. A.C.A. § 23-17-405 provides that the Commission may designate other telecommunications providers to be eligible for high-cost support consistent with 47 U.S.C. § 214(e) (2). This grant of authority to the Commission is conditioned on the telecommunications provider accepting responsibility to provide service to all customers in the ILEC's local exchange area through its own facilities or a combination of facilities, and the support will not begin until the telecommunications provider has the facilities in place to serve the area. The telecommunications provider may only receive funding for the portion of its facilities that it owns and maintains, the telecommunications provider must advertise the availability and charges for its services, and the Commission must determine that the designation is in the public interest.

There are essentially two issues presented in this docket. The first issue concerns ALLTEL's application for ETC status in areas served by SBC, a non-rural telephone company. The second issue concerns ALLTEL's request for ETC designation in the CenturyTel areas. CenturyTel is a rural telephone company as that term is used in 47 U.S.C. § 214(e)(6). Both CenturyTel and SBC are Tier 1 companies as that term is defined at A.C.A. § 23-17-403(26)(A) and used at A.C.A. § 23-17-405(d)(1).

A.C.A. § 23-17-405(b) states that this Commission may designate other telecommunications providers to be eligible for high-cost support, except in areas served by a rural telephone company, consistent with 47 U.S.C. § 214(e)(2). A.C.A. § 23-17-405 (d)(1) requires that, "For the entire area served by a rural telephone company, excluding tier one companies . . . there shall be only one (1) eligible telecommunications carrier. . . ." Since both

SBC and CenturyTel are Tier 1 carriers, the single carrier requirement of A.C.A. § 23-17-405 (d)(1) is inapplicable and the issues are governed by the provisions of §23-17-405 (d)(1) which requires consistency with 47 U.S.C. §214(e)(2).

47 U.S.C. § 214(e)(2) states that:

A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State Commission. Upon request and consistent with the public interest, convenience, and necessity, the State Commission may in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State Commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State Commission shall find that the designation is in the public interest.

(Emphasis added).

To the extent that ALLTEL seeks ETC designation in an area served by a non-rural telephone company, Section 214(e)(2) clearly directs the Commission to designate more than one common carrier as an ETC if the requirements of paragraph (1) are met. Sections 214 (e)(1)(A) and (B) require that the carrier seeking ETC status must "offer the services that are supported by Federal Universal Service support mechanisms under § 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and advertise the availability of such services and the charges therefore using media of general distribution. The affidavit submitted by ALLTEL clearly indicates that ALLTEL has, or upon receiving ETC designation will, offer the services required and advertise the availability of those

services in compliance with § 214(e)(1) and § 254(c) thereby meeting the requirements of § 214(e)(2) of the Federal Act.

The comments suggest that an ETC should provide service to all customers in an ILEC's area. It should be noted that even the ILECs do not have the facilities in place to serve all customers, particularly those in remote areas, of their allocated territories. This fact was clearly recognized by the Arkansas Legislature in adopting an extension of facilities fund to extend telecommunications facilities to unserved customers.⁸ The FCC has also addressed this argument stating:

We believe that interpreting section 214(e)(1) to require the provision of service throughout the service area prior to ETC designation prohibits or has the effect of prohibiting the ability of competitive carriers to provide telecommunications service, in violation of section 253 (a) of the Act. We find that such an interpretation of section 214(e)(1) is not competitively neutral, consistent with section 254, and necessary to preserve and advance universal service, and thus does not fall within the authority reserved to the states in section 253(b). In addition, we find that such a requirement conflicts with section 214(e) and stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress as set forth in section 254. Consequently, under both the authority of section 253(d) and traditional federal preemption authority, we find that to require the provision of service throughout the service area prior to designation effectively precludes designation of new entrants as ETCs in violation of the intent of Congress.⁹

A.C.A § 23-17-405 requires this Commission to act in a manner which is "consistent with § 214(e)(2) of the Federal Act . . ." FCC precedent holds that the fact that ALLTEL has agreed to comply with § 214(e) in obtaining ETC designation in an area served by a non-rural carrier is sufficient to determine that granting ETC status is consistent *per se* with the public interest. *In the Matter of Federal-State Joint Board on Universal Service; Farmer's Cellular Telephone, Inc.*

⁸ Act 1771 of 2001, A.C.A. § 23-17-404 (e)(7).

⁹ In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, ¶ 2, CC Docket No. 96-45, adopted July 11, 2000, FCC 00-248.

Petition for Designation as an Eligible Telecommunications Carrier, 18 FCC Rcd 3848 (released March 12, 2003); *Cellco Partnership d/b/a Bell Atlantic Mobile Petitioned for Designation as an Eligible Telecommunications Carrier*, 16 FCC Rcd 39, ¶ 14 (2000); *Pine Belt Cellular and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, 17 Rcd 9589, ¶ 13 (2002).

In adopting the Telecommunications Regulatory Reform Act of 1997(A.C.A § 23-17-401 *et seq.*), the General Assembly stated that its intent was to provide for a system of regulation, consistent with the Federal Act, that assists in implementing the national policy of opening the telecommunications market to competition on fair and equal terms. Many of the objections made to the granting of ETC status by the commenting parties suggest that the granting of ETC status could affect the profitability of those companies and possibly result in rate increases to their customers. They therefore argue that it is not in the public interest and is inconsistent with Arkansas law to approve the ETC request. This argument ignores the statutory intent to implement competition, which will obviously have an affect on the profitability of some companies, but will also provide competitive alternatives to customers. If the ILECs receive reduced terminating access charges from the contracts they have negotiated with wireless carriers, they should receive the benefit of paying reduced access charges for terminating their calls to the wireless networks. Additionally, the terminating access rates paid between ILECs and wireless carriers are negotiated rates which the ILECs have agreed to pay. The contracts between the ILECs and wireless carriers should not, therefore, provide a basis to deny ETC status to a wireless carrier.

The suggestion by the ILECs that granting ETC status could affect their profits and their customers' rates does not suggest that granting ETC status is not in the public interest. The

granting of ETC status to ALLTEL will provide a competitive alternative for customers in the area in which ALLTEL seeks to provide service. The effect on the ILECs in Arkansas, resulting from the funding of the USF through assessments on all carriers' interstate services, is essentially the same regardless of whether an ETC request is granted in Arkansas or by another state commission. There will be some effect on amounts paid by Arkansas ILECs, since all carriers' interstate revenues are assessed to support the USF; however, denying the request would prohibit a group of Arkansas consumers from having the competitive alternatives available to customers in other states even though those Arkansas consumers would be indirectly paying for the benefits to customers in other states through payments for interstate services which originate or terminate in Arkansas.

To the extent that the commenting parties have suggested that the Commission delay its decision pending resolution of some of the issues raised in the comments and currently pending or under consideration in United States Congressional committees or before the FCC's Joint Board, the request to delay would be inconsistent with the requirements of 47 U.S.C. § 214 (e)(2) which states that the Commission "shall" grant the ETC request if the requirements of the statute are met. Additionally, the issues raised by the commenting parties are best dealt with in the appropriate forums which have the jurisdiction to effect any changes which might be deemed necessary.

The commenting parties also argue that the ETC designation, if granted, should be conditioned on ALLTEL's agreement to submit to this Commission's jurisdiction for enforcement of the Commission's Telecommunications Provider Rules. This recommendation appears to be inconsistent with the requirements of A.C.A § 23-17-411(g), which substantially limits the Commission's jurisdiction over commercial mobile radio services. The

recommendation also lacks support under § 214(e) which requires the Commission to grant ETC status if the conditions set forth in the statute are met. In construing §214 (e) the FCC has stated:

We conclude that section 214 (e)(2) does not permit the Commission or the states to adopt additional criteria for designation as an eligible telecommunications carrier. As noted by the Joint Board, “[s]ection 214 contemplates that any telecommunications carrier that meets the eligibility criteria of section 214 (e)(1) *shall* be eligible to receive universal service support.” Section 214 (e)(2) states that “[a] state commission *shall* . . . designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier Section 214(e)(2) further states that “ . . .the State commission *may*, in the case of an area served by a rural telephone company and *shall*, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, *so long as each additional requesting carrier meets the requirements of paragraph (1).*” Read together, we find that these provisions dictate that a state commission must designate a common carrier as an eligible carrier if it determines that the carrier has met the requirements of section 214(e)(1). Consistent with the Joint Board’s finding, the discretion afforded a state commission under section 214(e)(2) is the discretion to decline to designate more than one eligible carrier in an area that is served by a rural telephone company; in that context, the state commission must determine whether the designation of an additional eligible carrier is in the public interest.¹⁰

The difference between the request to provide service in SBC territory and the request to provide service in CenturyTel territories lies in the fact that CenturyTel is a rural telephone company. 47 U.S.C. § 214(e)(6) provides that the Commission may, with respect to an area served by a rural telephone company, designate more than one ETC and requires that the Commission determine that such designation is in the public interest. Likewise, A.C.A. § 23-17-405(b)(5) requires the Commission to determine that ETC designation is in the public interest. The “shall” provision in the Federal Statute is not applicable in determining whether ETC status should be granted in a rural telephone company territory.

¹⁰ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, adopted May 7, 1997 ¶ 135, FCC 97-157. (Also see id at ¶ 142).

In determining whether to grant ETC status to ALLTEL in the areas served by CenturyTel a determination must be made of whether such a grant is in the public interest. The ILECs comments suggest that the potential harm to the ILECs, and possibly their customers, outweighs any benefits the customers may gain by having a competing ETC. ALLTEL's witness Mr. Krajci stated that ALLTEL's local calling area is "basically statewide." If ALLTEL is granted ETC status, customers, particularly Lifeline and Linkup customers, will have the benefits of a substantially increased local calling area. This could serve to reduce their toll bills and could make the service offered by an alternative ETC much more economically desirable. ALLTEL also asserts that its customers will have the benefit of mobility which the existing ETC does not currently provide. Granting ETC status to ALLTEL would also help open the telecommunications market to competition on fair and equal terms, consistent with the legislative intent of Act 77. The FCC has also stated that wireless carriers could potentially offer service at much lower cost than traditional wire line service, particularly in rural areas¹¹.

As for the potential harm to the ILECs resulting from the increased cost to the Universal Service Fund, ALLTEL notes that, for the 4th quarter of 2002, all competitive ETCs, both wireless and wire line, received only about 7% of the total USF disbursement. Therefore, it is logical to conclude that the impact on the USF from granting ALLTEL's application in this docket would be de minimis.

The customers who could benefit from the granting of this ETC request are currently contributing through rates, assuming they currently have telephone services, for the Federal USF. Since the USF is funded from assessments on all interstate services, these customers are

¹¹ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, adopted May 7, 1997 ¶ 190, FCC 97-157.

contributing to the costs of ETCs in Arkansas, including the ILECs filing comments in this docket who have ETC status, and are also contributing to the costs of ETCs in other states, just as customers in other states would contribute to carriers granted ETC status in Arkansas. On page 8 of its reply comments ALLTEL cites an order of the Wisconsin Public Service Commission entered on September 9, 2003 in Docket No. 7131-T1-101, concerning ALLTEL's application for ETC status in Wisconsin. In that order the Wisconsin Commission notes that 18 other State Commissions and the FCC have approved wireless ETC applications in rural areas. Given that Arkansas consumers are already paying for ETCs in other states, Arkansas Consumers would undoubtedly find it to be in the public interest for them to be allowed the benefits of a competitive ETC that seeks to provide service in areas of Arkansas. As described by ALLTEL witness Mr. Krajci,

...[W]ireless customers do contribute to the Federal Universal Service Fund. And additionally, those costs will be spread not over Arkansas users but over everyone that pays into the Federal USF on a nationwide basis. So to the extent that there are costs associated with ALLTEL receiving Federal support in Arkansas, yes, there are. When one asks who pays for that, actually, all wire line and wireless telephone users in all of the United States pays for that. So the benefit is that what ever cost is associated with Arkansas' customers, the benefit is something greater than that cost.¹²

A determination that granting ETC status to ALLTEL in this proceeding is in the public interest is not merely a "pork barrel local determination."¹³ Rather it is a simply recognition of the fact that customers in Arkansas, just as customers in other states, would prefer to share the benefits for which they are paying .

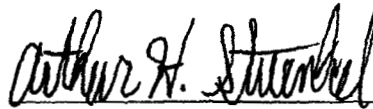
¹² Transcript p. 48.

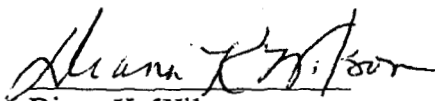
¹³ Id at 49.

In view of the foregoing the request by ALLTEL Communications, Inc. for ETC status in wire centers served by SBC, CenturyTel of Northwest Arkansas, LLC and CenturyTel of Central Arkansas LLC located in cellular market areas 92, 165, 182, 291, and 324-331 is hereby granted.

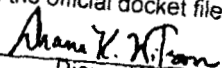
BY ORDER OF THE PRESIDING OFFICER PURSUANT TO DELEGATION.

This 31st day of December, 2003.


Arthur H. Stuenkel
Presiding Officer


Diana K. Wilson
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by the U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.


Diana K. Wilson
Secretary of the Commission
Date 12/31/03